

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SUSANA JUDD

Plaintiff,

VS.

**BRAUM'S INC. d/b/a BRAUM'S ICE
CREAM AND DAIRY STORE;**

Defendant.

§
§
§
§
§
§
§
§
§

CASE NO. 3:14-CV-2516

PLAINTIFF'S ORIGINAL COMPLAINT AND REQUEST FOR JURY TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Susana Judd, Plaintiff, complaining of Braum's Inc. d/b/a Braum's Ice Cream and Dairy Store, Defendant, and for cause of action would respectfully show the Court and Jury the following:

PARTIES

1. Plaintiff, Susana Judd, is a resident citizen of Frisco, Collin County, Texas. Her driver's license number is *****137.

2. Defendant, Braum's Inc. d/b/a Braum's Ice Cream and Dairy Store is a foreign for-profit corporation authorized to do business in the State of Texas and may be served with process by serving its registered agent for service, CT Corporation System, 1999 Bryan Street #900, Dallas, Texas 75201.

JURISDICTIONAL FACTS

3. Jurisdiction is based on diversity. At the time this cause of action was commenced, Defendant Braum's Inc. d/b/a Braum's Ice Cream and Dairy Store, was a foreign for-profit corporation conducting business in the Northern District of Texas.

VENUE FACTS

4. Venue is proper based on Defendant Braum's being the sole Defendant and residing in Texas pursuant to 28 U.S.C. § 1391(e)(1). Defendant Braum's is subject to personal jurisdiction and thus a resident of the Northern District of Texas based on its established minimal contacts within the District including its registered agent being within the Northern District along with numerous store locations.

FACTUAL BACKGROUND

5. On or about Wednesday, October 3, 2012, Plaintiff Susana Judd and her family had been at the Braum's Ice Cream and Dairy Store on 2680 West Main St., Frisco, Texas 75033, which is owned and operated by the Defendant. As Plaintiff Susana Judd was leaving, she slipped on a slippery wet crystalized substance and fell to the ground. No warning signs were present in the area. As a result of the incident, Plaintiff suffered extensive injuries, damages and continues to suffer such injuries and damages.

CAUSES OF ACTION AGAINST DEFENDANT

6. At the time, and on the occasion in question, Plaintiff, Susana Judd was an invitee at the time of the injury. Defendant therefore owed Plaintiff the duty to inspect the premises and maintain it in a reasonably safe manner.

7. Defendant Braum's Inc. d/b/a Braum's Ice Cream and Dairy Store is liable for the damages proximately caused to Plaintiff by the conduct of its managers and employees on the date of the incident made the basis of this suit. Defendant is liable for the damages proximately caused to Plaintiff under the doctrine of *respondeat superior*. Specifically, Defendant was negligent as follows:

- a. Failing to maintain the premises in question in a reasonably safe condition and free of hazards to Plaintiff and other invitees in the premises;

- b. Failing to correct the unreasonably dangerous condition which was created by the slippery wet crystalize substance on the premises in question;
 - c. Failing to warn invitees, including the Plaintiff, of the slippery wet crystalize substance in the premises in question;
 - d. Failing to properly inspect the premises in question to discover the unreasonably dangerous condition created by the slippery wet crystalize substance in the premises in question;
 - e. Failing to properly train its agents, servants, and/or employees regarding the proper manner in which to make the premises reasonably safe; and
 - f. Failing to implement proper policies, rules, and/or procedures to make its premises reasonably safe.
8. Each and all of the above and foregoing acts, both of omission and commission, singularly or in combination with others, constituted negligence which proximately caused the occurrence made the basis of this suit, and the Plaintiff's injuries and damages pled herein.

GROSS NEGLIGENCE

9. Defendant's acts and/or omissions as described above were such an entire want of care that said acts and/or omissions were the result of actual conscious indifference to the rights, safety, and/or welfare of Plaintiff Susana Judd.

DAMAGES

10. As a proximate result of Defendant's negligence, Plaintiff suffered extensive injuries and damages. As a result of Plaintiff's injuries, Plaintiff seeks monetary damages against the Defendant for the following:

- a. Physical pain and suffering in the past and future;
- b. Mental anguish in the past and future;
- c. Physical impairment in the past and future; and
- d. Medical expenses in the past and future.

REQUEST FOR JURY TRIAL

11. Plaintiff hereby demands a trial by jury and includes the appropriate jury fee.

RELIEF

12. WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendant be cited to appear and answer herein, and that upon final hearing thereof, Plaintiff recover:

- a. Judgment against Defendant for Plaintiff's physical pain and suffering in the past and future in an amount to be determined by the jury;
- b. Judgment against Defendant for Plaintiff's mental anguish in the past and future in an amount to be determined by the jury;
- c. Judgment against Defendant for Plaintiff's physical impairment in the past and future in an amount to be determined by the jury;
- d. Judgment against Defendant for Plaintiff's medical expenses in the past and future;
- e. Interest on the judgment at the legal rate from the date of judgment;
- f. Pre-judgment interest on Plaintiff's damages as allowed by law;
- g. All costs of court; and
- h. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

EBERSTEIN & WITHERITE, LLP

By: /s/ Kristofor S. Heald

KRISTOFOR S. HEALD

State Bar No. 24058770

kheald@ewlawyers.com

BRIAN A. EBERSTEIN

State Bar No. 06386000

beberstein@ewlawyers.com

AMY K. WITHERITE

State Bar No. 00788698

awitherite@ewlawyers.com

3100 Monticello Avenue, Suite 500

Dallas, Texas 75205

Tel: (214) 378-6665

Fax: (214) 378-6670

ATTORNEYS FOR PLAINTIFF